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anon

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## COMMENTS

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### JURISPRUDENCE AND THE NATURE OF LANGUAGE: CONTRASTING VIEWS OF HART AND CHOMSKY

Because much of modern philosophy has been preoccupied with some form of language analysis<sup>1</sup> and because jurists often apply philosophical techniques and insights when attempting to solve jurisprudential problems, theories or views of the nature of language have considerable jurisprudential significance. The point is illustrated by the recent movement toward using the methods of "ordinary language" philosophy in the analysis of legal problems.<sup>2</sup> The pattern is not new; a roughly similar relationship is seen in positivism and its application in jurisprudence.<sup>3</sup> The notion behind this approach is that an understanding of the nature of language contributes to the solution of philosophical and jurisprudential problems. More precisely, the premise is that language and conceptual knowledge are closely related.<sup>4</sup> The premise means that the jurist must have a correct view of language if he is going to use a theory of language to suggest and support jurisprudential conclusions. This does not, of course, mean that the conclusions are wrong if the theory of language proves wrong; there may be other supporting grounds.

Recent developments in descriptive linguistics suggest that prevalent theories or views of language are seriously inadequate.<sup>5</sup> Furthermore, significant progress has been made toward the formulation of an acceptable alternative theory.<sup>6</sup> To anticipate briefly, linguists reject current views, which are based on the premise that natural languages are unsystematic. Instead, language is viewed as a highly structured system of phenomena. The task of the linguist is to discover and represent the structure and explain its use in the language.

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<sup>1</sup> See generally WHITE, *THE AGE OF ANALYSIS* (1954).

<sup>2</sup> A survey of the leading writers and their work is found in Summers, *The New Analytical Jurists*, 41 N.Y.U.L. REV. 867 (1966).

<sup>3</sup> See, e.g., Stoljar, *The Logical Status of a Legal Principle*, 20 U. CHI. L. REV. 181 (1953); Probert, *Law and Persuasion: The Language Behavior of Lawyers*, 108 U. PA. L. REV. 35 (1959).

<sup>4</sup> KATZ, *THE PHILOSOPHY OF LANGUAGE* 4 (1966).

<sup>5</sup> See Katz & Fodor, *What's Wrong with the Philosophy of Language?*, 5 INQUIRY 197 (1962).

<sup>6</sup> See the discussion of the theory of language formulated by Noam Chomsky and others, text accompanying notes 32-41 *infra*.

Although the outline of the new theory of language has only recently been formulated,<sup>7</sup> linguists have already considered its implications for several major philosophical problems.<sup>8</sup> Philosophers are becoming aware of the importance of the linguists' conclusions<sup>9</sup> and it seems safe to say that, sooner or later, jurists must follow suit. The purpose of this Note is to analyze two markedly different views of the nature of language and their implications for jurisprudence. The approach will be as follows: The first section analyzes the view of language underlying two important and influential articles by Professor H. L. A. Hart.<sup>10</sup> The second section outlines the theory of language suggested by the work of Noam Chomsky<sup>11</sup> and other linguists, and draws on the theory to criticize Hart's views. In the third section, a comparison is made of Hart's and Chomsky's respective analyses of the problem of human action. In section four, some tentative suggestions are made for applying in jurisprudence a linguistic theory developed along the lines of Chomsky's work.

## I. HART'S VIEW OF LANGUAGE AND METHOD OF ANALYSIS

### A. *Definition and Theory in Jurisprudence*<sup>12</sup>

Hart opens his discussion by stating that he is concerned with questions usually characterized as requests for definitions, e.g., "what is a state or a right?" He claims that the common mode of definition fails to elucidate such concepts. Hart observes that the questions contain an ambiguity because the same form of words may be used in different ways: to ask for definitions or justification for legal institutions, etc. However, if the question is rephrased as "What is the meaning of 'right'?" it seems trivial because the perplexity cannot be solved by consulting a dictionary. The questioner is not asking to be taught how to use such words. He knows the use but is still puzzled. The puzzle arises from the fact that legal words are in various ways "anomalous." One anomaly is that these words do not have a straightforward

<sup>7</sup> CHOMSKY, *SYNTACTIC STRUCTURES* (1957) marks the beginning of the new methods.

<sup>8</sup> See generally KATZ, *op. cit. supra* note 4, at 186-317.

<sup>9</sup> ORDINARY LANGUAGE 4 (Chappell ed. 1964).

<sup>10</sup> Hart, *Definition and Theory in Jurisprudence*, 70 LAW Q. REV. 37 (1954); Hart, *The Ascription of Responsibility and Rights*, 49 PROC. ARIS. SOC'Y 171 (1949), in LOGIC AND LANGUAGE 145 (Flew ed. 1951).

<sup>11</sup> Chomsky has published a large body of important works. See, e.g., *SYNTACTIC STRUCTURES* (1957); *ASPECTS OF A THEORY OF SYNTAX* (1965); *CARTESIAN LINGUISTICS* (1966).

<sup>12</sup> Hart, *Definition and Theory in Jurisprudence*, 70 LAW Q. REV. 37 (1954). In general, page citations are hereafter omitted.

connection with facts. Words such as "duty" simply do not describe. They have a wholly different function and as a result the common mode of definition, the descriptive mode, seems inappropriate. Furthermore, the descriptive model of definition may be worse than inappropriate because it has caused theorists to construct unhelpful theories. The theories are not necessary to the legal system which goes on using the words without difficulty. Thus, something must be wrong with the model of definition.<sup>13</sup>

Hart argues that the function of sentences containing the word "right" is not to describe facts or results, but merely to draw a conclusion of law from a specific kind of legal rule. He analogizes to statements such as "he is out" when used in a game of cricket. Such statements appeal to the rules of the game but they do not describe them or anything else. Facts or rules may be appealed to if the statement is challenged, but they are not referred to or described by the conclusion itself.

Hart next makes a related and important point. He notes that there may be many situations in a game in which a player may be out and there need be nothing common to these situations. Similarly, a sequence of actions may be unified simply by falling under certain rules. The rules of corporate law operate in this manner. Useful as this is, the unity of the rule may be misleading because it suggests a non-existent unity—the "corporate spirit"—in the sequence. Several points in Hart's analysis may be noted. First, the descriptive model of definition cannot elucidate the meaning of legal concepts, because legal words simply do not describe. Second, the descriptive model has prompted unhelpful theory building. Third, the unique logical function of statements containing legal concepts is to draw legal conclu-

<sup>13</sup> Although Hart refers only to legal "theorists," his argument seems to parallel the ordinary language philosopher's argument against the positivist model of language and definition. Compare a simplified account of Wittgenstein's two views of language. In the *Tractatus*, language was seen as consisting of sentences by means of which one asserts that something is or is not the case. HARTNACK, WITTENSTEIN AND MODERN PHILOSOPHY 20 (1965). In the *Investigations*, Wittgenstein repudiates this view because it neglects all the nondescriptive functions which language performs. He states "It is interesting to compare the multiplicity of the tools in language and of the way they are used, the multiplicity of kinds of word and sentence, with what logicians have said about the structure of language. (Including the author of the *Tractatus Logico Philosophicus*.)" WITTENSTEIN, PHILOSOPHICAL INVESTIGATIONS 12e (1953). Perhaps it is accurate to say that the early view was that language must consist of descriptive statements or else it could not work, while the latter view was that nondescriptive statements clearly do work and therefore language cannot consist solely of descriptive statements. For a sound historical study of the philosophical background of ordinary language philosophy, see URMSON, PHILOSOPHICAL ANALYSIS—ITS DEVELOPMENT BETWEEN THE TWO WORLD WARS (1956).

sions. Finally, the unity of a rule may mislead us into thinking that there is a unifying entity or quality in the phenomena.

Despite the inappropriateness of the ordinary form of definition, there is, Hart maintains, a method of elucidating these words. The method is to take a sentence in which the word plays its characteristic role and explain it first by specifying the conditions under which the sentence is true and second, by showing how it is used to draw a legal conclusion in a particular case.

Hart's use of the term "true" in his method of explanation seems unfortunate because it suggests that a factual statement is involved, something Hart clearly wishes to avoid.<sup>14</sup> Hart's method is to provide the questioner with a guide as to how legal statements are used. This entails reference to usage, a description of the sorts of situations in which the statement has characteristically appeared.<sup>15</sup> In these sorts of situations, the statement might be said to be true in the sense that it is appropriate. The statement need not describe anything in order to be appropriate.<sup>16</sup> In fact, legal statements do not describe but perform a different function. In short, it is possible to describe how a non-descriptive statement is used in the language. The description of usage will, of course, be based on the facts of usage.<sup>17</sup> We may say that these facts are the criteria for determining whether the statement was appropriate, but the statement itself does not describe these criteria.

<sup>14</sup> Auerbach expresses his inability to understand Hart's use of the terms "true" and "conclusion of law." Auerbach, *On Professor H. L. A. Hart's Definition and Theory in Jurisprudence*, 9 J. LEGAL ED. 39, 41 (1956). Auerbach maintains that if the statement "X has a right" is a syllogistic conclusion, it cannot be true or false because it is not a factual statement. The simple answer to Auerbach is to point out that his claim merely stipulates the way in which he wants "true" to be used, i.e., only for factual statements. Ordinary usage will not support this conclusion and all Hart wants to do is tell someone when he could appropriately say "It's true that X has a right." For an excellent discussion of the error of making a radical existemological distinction on the basis of the actual appearance of words such as "it is true that," see WHITE, TOWARDS REUNION IN PHILOSOPHY 236-39 (1956). In his *Ascription* article, Hart avoids the use of "true" in his discussion of ascriptive sentences when used by a person lacking authority. When we say "he did it," we are judging. Subsequent events may make us withdraw our judgment, not because it was false, but because it is no longer justified. Hart, *supra* note 12, at 165.

<sup>15</sup> Hart states "To elucidate [a legal statement]... we must take the whole statement... and describe its use..." Hart, *supra* note 12, at 52.

<sup>16</sup> Consider Austin's contrast between "declarative" and "performative" utterances. He is willing to say that the declarative has the property of being true or false whereas the performative does not. However, the performative is open to challenge, not by attacking its truth, but by showing that it was not "issued in a situation appropriate in all respects for the act in question." (Emphasis added.) Austin, *Performative-Constative*, in PHILOSOPHY AND ORDINARY LANGUAGE 22, 23 (Caton ed. 1963).

<sup>17</sup> A fundamental question concerning descriptions of use is the source of the information about use. For a discussion of this problem, see note 51 *infra* and accompanying text.

For example, it would make sense to ask "When is it appropriate to say 'Hello'?" But no one would suppose that "Hello" describes the appropriate circumstances.

Summarizing, Hart rejects one form of definition, the descriptive model, and proposes an alternative means of clarifying legal concepts. He spells out in detail the manner in which conceptual confusion arises from the descriptive model. The model suggests that there is "something more" to legal concepts than merely a variety of uses. By focusing on the nondescriptive use or function of such concepts, the conceptual confusion can be eliminated. Thus, when considering the concept "corporation," Hart states:<sup>18</sup>

if we characterise adequately the distinctive manner in which expressions for corporate bodies are used in a legal system then there is no residual question of the form "What is a corporation?" There only *seems* to be one if we insist on a form of definition or elucidation which is inappropriate.

With these remarks, attention now shifts to the role of Hart's view of language in his analysis of the concept of human action. To date, critics have given little attention to this aspect of Hart's discussion in *Ascription*.<sup>19</sup> Nonetheless, an attempt will be made to show that Hart's view of language underlies, and to a large extent dictates, his analysis.

### *B. The Ascription of Responsibility and Rights*

Hart begins by stating that in our ordinary language there are sentences whose primary function is not to describe things or events, but to do such things as to claim, recognize or ascribe rights, or to admit or ascribe responsibility. Analysis of the concept of human action has been inadequate because sentences of the form "He did it" have traditionally been regarded as descriptive whereas their principal function is "ascriptive," *i.e.*, they ascribe responsibility for actions. These ascriptive sentences resemble certain formal statements which appear in the law. Hart therefore proposes to bring out some of the characteristics of legal concepts. He then will attempt to show how sentences ascribing rights function in ordinary language and why the function is overlooked. Finally, he states that he will try to support his claim

<sup>18</sup> Hart, *supra* note 12, at 55.

<sup>19</sup> Hart, *The Ascription of Responsibility and Rights*, 49 *PROC. ARIS. SOC'Y* 171 (1949), in *LOGIC AND LANGUAGE* 145 (Flew ed. 1951). Cites are to Flew. Two articles which accept Hart's basic approach while questioning certain of his conclusions are: Pitcher, *Hart on Action and Responsibility*, 69 *PHIL. REV.* 226 (1960); Feinberg, *Action and Responsibility in Philosophy in America* 134 (Black ed. 1965).

that inattention to the ascriptive function of certain sentences results in philosophical puzzles concerning action.

These opening statements parallel Hart's methodological remarks in *Definition*: conceptual analysis consists of examining the function of ordinary language sentences.<sup>20</sup> Confusion about function leads to confusion about concepts. The way to remove conceptual confusion is to provide an accurate description of ordinary usage.

Hart notes that the common notion of a judicial decision is that the judge typically answers the question "Do the facts come within the scope of the formula defining the necessary and sufficient conditions of 'contract,' 'trespass,' etc." Hart sees two defects in this position. First, the formula or rule is not explicitly formulated but must be derived by the judge from past cases. The looseness of this process makes the legal concept vague and thus, the definition of a legal concept can only be given by referring to the leading cases and adding the word "etcetera."

Hart does not elaborate on this point, but it seems clear that it is closely related to Wittgenstein's well-known observations about the word "game." Wittgenstein claimed it was a mistake to suppose that a word has meaning because there is something common to all the situations in which it is used. For example, if the use of the word "game" is examined, it is seen that there are similarities and relationships—"family resemblances"—but no feature common to all.<sup>21</sup> In the law, the same resemblances between contract cases exist, but again, there probably is no common feature, nor need there be one.

The "family resemblance" point might be applied to the concept of human action. The variety of ordinary language uses of the notion "human action" may indicate that there are no necessary and sufficient

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<sup>20</sup> It should be noted that Hart is concerned with a method of analysis. One writer has criticized Hart's view on the ground that he seeks to distinguish sharply between ordinary language and legal language. Simpson, *The Analysis of Legal Concepts*, 80 LAW Q. REV. 535, 554 (1964). A disagreement as to whether legal terms function differently than ordinary language terms does not entail disagreement as to the method of analysis appropriate to all forms of language. The deeper question is whether different method of analysis is necessary. Hart's work assumes it is not; he analyzes the ordinary use of legal language, i.e., the lawyer's and judge's use.

<sup>21</sup> Wittgenstein states:

Consider for example the proceedings we call 'games.' . . . What is common to them all? Don't say: 'There *must* be something common, or they would not be called 'games'—but *look and see* whether there is anything common to all.—For if you look at them you will not see something that is common to them *all* but similarities, relationships, and a whole series of them at that. To repeat: don't think but look!

Somewhat further, he states, "I can think of no better expression to characterize these similarities than 'family resemblances.'" WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* 31e-32e (1953).

conditions for its application. However, Hart seems to go farther than to say that ordinary usage suggests that this is the case; he attempts to show that this must be the case.

Continuing with his analysis of legal concepts, Hart states that there is a second characteristic of these concepts which makes the word "unless" as indispensable as the word "etcetera" in any definition of them. This characteristic can be seen by examining the ways in which legal utterances can be challenged. The defense can admit all the circumstances on which a claim could succeed, yet prove an exception which defeats or reduces the claim. This makes it usually impossible to define a legal concept by specifying necessary and sufficient conditions for its application. Although these are necessary conditions, these are not always sufficient. Hart borrows the term "defeasible" to label this characteristic of legal concepts.

The finding that legal concepts are "irreducibly defeasible" supposedly proves that definition in terms of necessary and sufficient conditions is inadequate.<sup>22</sup> The theorist who demands a set of necessary and sufficient conditions obscures the nature of the concepts. Furthermore, it is in precisely this way that theorists have obscured the defeasible character of the concept of human action.

It may be useful to summarize the features of Hart's analysis to this point. First, an examination of the use of legal concepts suggest that these concepts cannot be defined by a set of necessary and sufficient conditions. Second, the defeasible character of legal concepts confirms this suggestion. Third, a demand for such conditions obscures the definition of the concept. Finally, the concept of human action may be similarly analyzed.

Study of the various defenses to legal claims is of interest not only because they show that legal concepts are defeasible, but also because they frequently contain a reference to some "mental" factor. This makes the defenses doubly interesting to the philosopher since the mental factor has traditionally played a key role in the analysis of the concept of human action. Hart maintains that it is instructive to see how reference to a mental factor arises from an inappropriate theore-

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<sup>22</sup> It would seem that, following the logic of Hart's argument, the list of defenses must also be followed by "etc." In any case, Hart clearly thinks that he has proved that defeasible concepts cannot be defined by necessary and sufficient conditions. Hart, *supra* note 19, at 149 n.1. Unfortunately, while one can show that it is unlikely that some set of uses have no common feature, one cannot prove that none exists. There may be a rule which we have not yet discovered. See KATZ, *THE PHILOSOPHY OF LANGUAGE* 72-73 (1966).



tical demand. Thus, the theorist might note the reference to the will and knowledge of the defendant, expressed in various defenses to a contract claim and argue that this shows that the definition of "contract" requires as a necessary condition that there must be "full and free consent" in the minds of the parties. As a summary of various defenses, says Hart, this may be harmless, but as a general formula, it may be misleading because it suggests a requisite psychological element in the definition of "contract." The defenses, however, are not evidence of a factor called "true consent," but one of the multiple criteria for the use of the phrase "no true consent." To say that the law requires true consent is to say that certain defenses are admitted. The theorist can argue that practical difficulties of proof require objective tests but that psychological states are nonetheless theoretically required in defining the concept of a contract. However, this "would merely be to express obstinate loyalty to the persuasive but misleading logical ideal that all concepts must be capable of definition through a set of necessary and sufficient conditions."<sup>23</sup> And later, "in pursuit of the will-o-the-wisp of a general formula, legal theorists have sought to impose a spurious unity" upon the defenses.<sup>24</sup>

Hart's argument has been set out in some detail in order to show that his rejection of the possibility of definition of legal concepts by providing necessary and sufficient conditions for their use is one of the central points in his analysis of human action. He seems to say that the theorist's desire for his mode of definition accounts for his positing a unifying mental factor. His point, however, is in one sense more limited. The necessary and sufficient condition model of definition would call for a unifying factor but the factor need not necessarily be psychological. Conceivably, for example, the defenses might all refer to a physical characteristic of the defendant. Another feature of the argument is that it does not show that mental factors do not actually exist or are not genuinely referred to in the defenses. No error would necessarily be made if the theorist said that various defenses referred to a wide variety of mental factors. Thus, Hart's argument to this point is that the necessary and sufficient condition model of definition can not apply to certain concepts and that going ahead and applying it results in the imposition of a spurious unity on these concepts. Attention now shifts to the second major aspect of Hart's analysis: his at-

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<sup>23</sup> Hart, *supra* note 19, at 152.

<sup>24</sup> *Id.* at 153.

tempt to show that the concept of human action does not entail reference to any mental factor at all, whether unitary or not.

Hart extends the kind of analysis applied to the concept of contract to the concept of *mens rea* in the criminal law. Again the heterogeneity of the defenses to criminal charges is obscured by imposing a spurious unity on them. However, there is an additional point. The defenses do not negative the presence of necessary mental elements, but rather defeat the allegation of responsibility. In other words, the function of the sentences used to make criminal charges is to ascribe responsibility and the defenses negative this ascription, not the presence of a mental factor. Only if sentences making criminal charges were descriptions would it be logically possible for the defenses to negative the presence of some described mental state.

Hart attempts to show that sentences such as "he did it" are used to ascribe responsibility, just as sentences making criminal charges are, rather than to describe a human action. He begins by contrasting the traditional philosophical analysis of the concept of human action. It is crucial to note what Hart thinks the traditional philosopher regarded as the issue. Hart claims the issue was "What distinguishes the physical movement of a human body from a human action?"<sup>25</sup> The old-fashioned answer to this question was to say that in a human action, a mental event caused the physical event. The modern version is that to say *X* acted is to assert that his body moved and that *X* would have responded differently to various stimuli or to other choices. Both make the common error of supposing that analysis of the concept can be given in some combination of descriptive sentences or sentences about the individual. Both mistakenly identify the meaning of a non-descriptive utterance with the factual circumstances which support the ascription of responsibility.

To summarize Hart's second point, the concept of human action is often obscured by the demand for a referent—the mental factor. This occurs because certain statements *seem* to refer to some such factor. A closer examination of the function of these sentences discloses that they do not refer (do not describe) but rather ascribe responsibility. The search for a referent is, therefore, a spurious enterprise.

Hart thus sees two ways in which the concept of human action can be obscured. First, the theoretical demand for necessary and sufficient conditions of meaning where none in fact exist leads to imposing a

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<sup>25</sup> *Id.* at 160.

spurious unity. Second, mistaking nondescriptive for descriptive sentences leads to postulating spurious referents. These two errors are related. The theoretical model of definition plays a controlling part in this second error; the search for necessary and sufficient conditions is a search for descriptive referents. Hart makes this quite clear when he states that the difficulties with the concept of human action "are results of the insistence that 'action' is a descriptive concept definable through a set of necessary and sufficient conditions."<sup>26</sup>

In both *Definition* and *Ascription*, Hart repeatedly stresses the confusion caused by demanding that conceptual analysis conform to preconceived "theories" of definition or meaning. The theorist creates confusing concepts and problems. The way to deal with the theorist is not to prove that his theory is incorrect, but, quite simply, to show that his theory is irrelevant. Such theory-building has no practical use—it is "spurious"—and diverts attention from genuine problems. The method of revealing the theorist's error is to show that the way we talk sometimes makes it seem as if we are doing one thing with a statement when in fact we are doing something quite different. Thus, it might seem that when we say "he did it" we are responding to a practical need to describe an act but, in fact, a closer look reveals that we are responding to the practical need to ascribe responsibility. Because problems about the concept of human action are, on examination found to be problems about ascribing responsibility, we can forget about the theorists' misleading talk about mental states and focus on the practical problem of deciding whether our ascriptions are serving their intended purposes.<sup>27</sup>

Hart's method seems in the final analysis, antitheoretical.<sup>28</sup> Generalizations are likely to be misrepresentations.<sup>29</sup> Rather than assuming language must conform to a simple model based on certain descriptive statements, Hart focuses on a segment of discourse and attempts

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<sup>26</sup> *Id.* at 165.

<sup>27</sup> Hart does not deny that there are important questions involved in situations where we often have difficulty with definitions. In *Definition*, he states "Preoccupation with the search for some common feature is apt in either case to divert us from the important inquiries..." Hart, *supra* note 12, at 44 n.9. In *Ascription*, Hart distinguishes "the question of the history and the pragmatic value and, in one sense, the morality of the distinctions we draw, from the question what these distinctions are." Hart, *supra* note 19, at 166. These remarks demonstrate that Hart considers it possible to provide adequate descriptions of the essential features of language without any explanatory hypothesis of why these and not other features are essential. This is a fundamental defect in Hart's position. Chomsky's work is aimed precisely at overcoming this type of limitation. See note 47 *infra* and accompanying text.

<sup>28</sup> Katz argues that this is symptomatic of ordinary language philosophy. KATZ, *op. cit. supra* note 4, at 88.

<sup>29</sup> See Hart, *supra* note 19, at 150-152.

to provide a detailed description of the uses of statements appearing in such contexts. The description may reveal certain general features of usage. However, it is perhaps more important to reveal the diversity of uses, to provide examples and counter-examples, which dispel preconceived notions of how language must function.

It is submitted that implicit in Hart's method of analysis is a conception of the nature of language which embodies two fundamental assumptions. First, language is a communicative device designed by man to facilitate a variety of practical purposes.<sup>30</sup> Second, language is essentially unsystematic, *i.e.*, there is no necessary structure behind the series of speech events which constitute a language. These two assumptions are interrelated. Man has an indefinite number of logically unrelated purposes. Therefore, language has an indefinite number of logically unrelated uses or functions. Likewise, because there is no necessary structure underlying language, language imposes few constraints on man's activities. Language follows but does not direct or shape experience.

Recent work in linguistics suggests that both of these assumptions about language are incorrect, and that a method of analysis based on them is inadequate. The work of Noam Chomsky and others is premised on the view that language is highly systematic and that the goal of any serious study of language must be the explication and explanation of the structure of language.<sup>31</sup> Thus, in direct contradiction to Hart, the goal is an adequate "theory" of language.

## II. CHOMSKY AND THE DEVELOPMENT OF A THEORY OF LANGUAGE

A linguistic theory is a system of hypotheses concerning the general features of natural languages. The theorist analyzes linguistic descriptions of particular languages and seeks to determine whatever these descriptions have in common. In short, he seeks the universals of

<sup>30</sup> In *Ascription*, Hart indicates that we make the statements we do on functional grounds. He states "Certainly, there is a connection between the two questions, that is between theories of punishment and reward and attempts to elucidate the criteria we do in fact employ in assigning responsibility for actions." There are also other practical reasons for the criteria being fixed as they are, *e.g.*, habit, conservatism, the need for certainty. Hart, *supra* note 19, at 165-66. All of this assumes that man can structure language according to his purposes.

<sup>31</sup> "[T]he problem for linguistic theory is to discover general properties of any system of rules that may serve as the basis for a human language, that is, to elaborate in detail... the general *form of language* that underlies each particular realization, each particular natural language." Chomsky, *Topics in the Theory of Generative Grammar*, in 3 CURRENT TRENDS IN LINGUISTICS (1966).

linguistic description.<sup>32</sup> In approaching this problem, the linguist must answer three types of questions. First, what is the subject-matter of linguistics, *i.e.*, what phenomena must be accounted for? Second, what is the formal structure of the description given, *i.e.*, what is the nature of the explanation given by the rules? Third, what are the proper methodological operations for constructing a theory?<sup>33</sup> These three questions are obviously interrelated. However, it was by offering a different answer to the first that Chomsky changed the focus of linguistic inquiry.

Prior to Chomsky's work, modern linguistics had conceived of language as an inventory of elements and had accordingly attempted to systematically catalogue them.<sup>34</sup> Little attention was given to the process by which these elements were combined to form sentences. Chomsky rejected the view that the subject-matter of linguistics was an inventory of elements. Instead, he states:<sup>35</sup>

The central fact to which any significant linguistic theory must address itself is this: a mature speaker can produce a new sentence on the appropriate occasion, and other speakers can understand it immediately, though it is equally new to them. Most of our linguistic experience, both as speakers and hearers, is with new sentences; once we have mastered a language, the class of sentences with which we can operate fluently and without difficulty or hesitation is so vast that for all practical purposes (and, obviously, for all theoretical purposes), we can regard it as infinite.

The production of new sentences, the "creative" aspect of language is thus taken to be the central fact which must be accounted for in a theory of language.

It is apparent that the formation of sentences is not a random affair; certain rules are followed. Furthermore, rote recall plays a minimal part in the use of sentences because few, if any, are learned verbatim. What occurs is that from a limited experience with speech, every normal human being develops a thorough competence in his native language. The task of the descriptive linguist is to represent this competence as a system of rules permitting an infinite output of sentences.<sup>36</sup> In Chomsky's view, this system is the "grammar" of the

<sup>32</sup> THE STRUCTURE OF LANGUAGE, READINGS IN THE PHILOSOPHY OF LANGUAGE 19 (Fodor & Katz ed. 1964).

<sup>33</sup> *Ibid.*

<sup>34</sup> See generally Chomsky, *Current Issues in Linguistic Theory*, reprinted in FODOR & KATZ *op. cit. supra* note 32, at 59-61. The article provides an excellent general introduction to Chomsky's views. The textual outline of Chomsky's theory of language is drawn primarily from this source.

<sup>35</sup> *Id.* at 50.

<sup>36</sup> The technique of expressing how language can make infinite use of finite

language. The grammar assigns a certain structural description to each possible utterance. The structural description specifies the linguistic elements and structural relations of each utterance. The structural description will indicate that given utterances are perfectly well-formed sentences. The set of these sentences is the language generated by the grammar. Chomsky calls the device a "generative grammar" and contrasts it with a descriptive statement which merely presents an inventory of linguistic elements.<sup>37</sup>

It may be useful to give a rough picture of the role of the grammar in communication. A speaker or hearer of a natural language has internalized a system of rules (how this is done is, for the moment, irrelevant).<sup>38</sup> In performing, these rules are put to use. The speaker chooses some message which he wants to communicate. In effect, he encodes the message according to the rules of the grammar and vocalizes the appropriate utterance. The hearer applies similar rules to decode the utterance and thereby elicit the meaning of the message. It is to be noted that, according to this model, successful communication occurs only when there is a congruence of the speaker's and hearer's thoughts.<sup>39</sup>

The generative grammar of a language contains three components. First, there is a central syntactic component which provides a statement of the rules by which a speaker organizes the elements of the language into permissible sentence structures. Second, there is a phonological component which states the rules for converting the sentence structures into vocal sound representations. Third, there is a semantic component which states the rules for assigning a meaning to the sentence structures. Both the phonological and semantic components are

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means involves recursive rules which have been developed within the last thirty years in mathematics. See CHOMSKY, *ASPECTS OF A THEORY OF SYNTAX* 8 (1965).

<sup>37</sup> Chomsky, *supra* note 34, at 51.

<sup>38</sup> For discussion of the means by which linguistic competence is acquired, see notes 63-66 *infra* and accompanying text.

<sup>39</sup> This interpretation of communication is offered by KATZ, *op. cit. supra* note 4, at 102-04. It is not clear how exact this congruence is. Chomsky, in discussing Humboldt's work (with which he is in basic agreement) indicates that mental concepts will be similar but not identical when communication takes place. Chomsky, *supra* note 34, at 58.

It is important to note that the term "language" as used by Chomsky, is not limited to linguistic communication. Thus, he states, "a language should not be regarded merely, or primarily, as a means of communication... and the instrumental use of language (its use for achieving concrete aims) is derivative and subsidiary." *Id.* at 59. The implications of this view are considered *infra* notes 67-73 and accompanying text. Katz seems to place greater emphasis on the communicative nature of language. He states "Natural languages are vehicles for communication..." KATZ, *op. cit. supra* note 4, at 98. The distinction, if one in fact exists, does not alter Katz's basic agreement with Chomsky's views.

interpretive; they relate the abstract syntactic structure to concrete patterns of sound and meaning. The phonological and semantic components are not directly related to one another (sounds and meaning are usually arbitrarily related) but are linked through the structures provided by the syntactic component. The theory of language, therefore, seeks to explicate the form and connections between the three components.<sup>40</sup>

The construction of a theory along the lines indicated is a scientific enterprise in the same sense as construction of a theory of physics. The data to be accounted for relate to the speaker's linguistic competence.<sup>41</sup> The linguist describes the structure of the sentences which the fluent speaker accepts as well-formed and formulates general rules about the structure. On the basis of the rules, the linguist makes predictions about new utterances. The test of the success of the theory is whether the predictions conform to the linguistic intuition of the fluent speaker. If they do not, the theory must be revised.

Before proceeding with Chomsky's views, it is useful to indicate why in light of Chomsky's work Hart's method of conceptual analysis fails because of his failure to deal with the creative aspect of language.

Hart's method of carefully characterizing the use of individual words or expressions does not explain how new statements are produced or understood.<sup>42</sup> His method neglects the fact that the compositional rules of the language play a major part in determining the meaning of any given statement.<sup>43</sup>

In fairness to Hart, it must be said that the careful description of use is a necessary prerequisite to a theory of language.<sup>44</sup> Furthermore, it is true that, given the precise use of each term, the terms can be intelligently applied by a fluent speaker of the language. Thus, a method of explanation which gives examples of accepted use will usually be effective. The reason for success, however, is that the fluent speaker implicitly utilizes the internalized system of rules. Absent this system,

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<sup>40</sup> This is, of course, a very rough picture of the form of a linguistic theory. For a full discussion, see CHOMSKY, *op. cit. supra* note 36.

<sup>41</sup> A distinction between "competence" and "performance" is central to Chomsky's work. It is discussed more fully in text accompanying note 53 *infra*.

<sup>42</sup> See generally, Katz & Fodor, *What's Wrong with the Philosophy of Language?*, 5 INQUIRY 197 (1962). This article presents the most comprehensive critique by linguists of prevalent philosophical conceptions of language.

<sup>43</sup> Much of modern linguistics, like modern philosophy, has paid little attention to the compositional rules which account for the creative use of language. See Chomsky, *supra* note 34, at 60.

<sup>44</sup> See Katz and Fodor, *supra* note 42, at 215.

providing examples of use would be fruitless.<sup>45</sup> The necessity of the compositional rules in the process of understanding is vividly illustrated by the process of learning a foreign language. The customary breakthrough comes when the student begins to "think" in the language, to master the rules rather than merely memorize the dictionary meaning of the words. And, of course, the test of fluency in a language is precisely the ability to produce and understand novel statements.

Hart seems to recognize that his method does not explain the ability of speakers to use language. In *Definition*, he assumes an audience that "knows" the use of legal words and denies that he is concerned with teaching anyone how to use legal language.<sup>46</sup> Thus, one could argue that Hart should not be faulted for something he has not attempted. Perhaps he has revealed significant features of language even though he has not explained the underlying linguistic rules.

The defect in this argument is that absent an explicit theory of linguistic structure, it is not possible to make an adequate characterization of uses.<sup>47</sup> Hart's method of explanation is to give an example of a "correct" use of a word, thereby implying that some uses are "incorrect." This presupposes some method of deciding between various claims about the uses. Likewise, the claim that a statement is ascriptive rather than descriptive requires that we know what these uses are and how we identify them in the language.<sup>48</sup> No description of various uses, however exhaustive, provides a method of deciding which uses are important to an understanding of conceptual knowledge even though they do provide the data for a theory of language.

Hart might counter with the claim that it is intuitively obvious when a use is an "ordinary" use. The appeal to intuition fails on two grounds. First, there may be disagreement as to whether a use is ordinary. Second, even if the use is not ordinary, this may be true for a variety of reasons. Consider the following:<sup>49</sup>

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<sup>45</sup> Traditional grammars operated in just this way, *i.e.*, they gave many regular and irregular examples from which the user was to draw inferences. Despite the failure to formulate generative principles, the goal of traditional grammars—teaching the user to be able to use novel utterances—was sound. See CHOMSKY, *op. cit.* *supra* note 36, at 5-8.

<sup>46</sup> Hart, *supra* note 12, at 37.

<sup>47</sup> "[I]t seems that no inventory... can be determined without reference to the principles by which sentences are constructed in the language." Chomsky, *supra* note 34, at 60.

<sup>48</sup> See generally Katz & Fodor, *supra* note 42, at 212-15. Compare the discussion of performatives, *id.* at 214.

<sup>49</sup> These examples are among those presented by Katz & Fodor, *supra* note 42, at 216. Linguists seem to enjoy concocting odd sentences, *e.g.*, Chomsky's "colorless green ideas sleep furiously."



1. I just swallowed my nose.
2. I will show you fear in a handful of dust.
3. This lovely red rose is a red rose.
4. Physical objects do not exist.

None of these are "ordinary" yet (1) and (3) hardly can be said to raise conceptual difficulties. What is needed is a theory which makes explicit the reasons for our linguistic intuitions. Without such a theory a description of ordinary language is inconclusive.

One argument which Hart might make is that he is, at least to a limited extent, generalizing about ordinary uses. *Definition* is devoted primarily to outlining a method of representing legal words. The emphasis is on avoiding confusion by describing what we already know,<sup>50</sup> although Hart does make a general claim as to the logic of legal conclusions. In *Ascription*, a positive claim is made. Hart maintains that an examination of usage supports the claim that statements about action are generally used to fix responsibility.<sup>51</sup> Even accepting this as true, Hart offers no reason for us to suppose that this is a universal feature of language. The way in which statements are used in a court may be idiosyncratic or perhaps only one of a variety of uses.<sup>52</sup> More broadly, ordinary use may be ordinary for one group but not another. Thus, without a theory of language, there is no way to show that a particular conclusion is not relativized to an unrepresentative segment of discourse.

These objections to Hart's approach rest, in the final analysis, on Chomsky's distinction between linguistic competence and performance. Chomsky's theory is concerned with the ideal speaker in a homogeneous speech community who knows the language perfectly. Grammatically irrelevant conditions such as memory limitations, distractions, and errors are excluded. It is, of course, obvious that such factors play an important part in linguistic performance and therefore performance will not directly reflect competence. Nonetheless, the problem for the

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<sup>50</sup> This feature of ordinary language philosophy stems directly from Wittgenstein, e.g., "Philosophy may in no way interfere with the actual use of language; it can in the end only describe it." WITTGENSTEIN, *op. cit. supra* note 21, at 48e.

<sup>51</sup> The shift from simple description ("We say, 'he did it'") to claim *about* such statements ("When we say 'he did it' we are ascribing responsibility") is of major importance. Cavell has argued that the ordinary language philosopher does not need empirical support for either type of statement. Cavell, *Must We Mean What We Say?*, 1 INQUIRY 172 (1958). This view has been strongly criticized. See Fodor & Katz, *The Availability of What We Say*, 72 PHIL. REV. 57 (1963). In defense of Cavell, see Henson, *What We Say*, 2 AM. PHIL. Q. 52 (1965). It is submitted that the question ultimately turns on the problem of competence versus performance, discussed in text above.

<sup>52</sup> See KATZ, *THE PHILOSOPHY OF LANGUAGE* 93-94 (1966).

linguist remains one of constructing a theory of competence.<sup>53</sup> If this seems a trivial enterprise, consider the fact that this is the identical task facing a normal child who is learning a language. He is faced with a largely random sample of speech events, many of which contain errors, omissions and ambiguities. From this data, he must (and obviously does) determine the underlying system of rules which are used in generating new utterances. The fact that the normal child does this without any consciousness of how it is done in no way diminishes how remarkable a feat this is.

The actual speaker is unaware of the rules which he employs in performing, just as the child is unaware of the process by which he masters a language. Furthermore, it is unlikely that the speaker could become aware of the rules or make necessarily accurate statements about his linguistic competence. Thus, the speaker's statements *about* his intuitive knowledge and behavior may be wrong. The theory is concerned with what the speaker knows, not what he reports about his knowledge.<sup>54</sup>

It may seem paradoxical to say that what a speaker intuitively knows is the subject matter of a linguistic theory and then to say that the speaker can be wrong when he makes an intuitive statement about his knowledge. It is true that there is no direct means of observing the speaker's competence and that performance must provide the criteria for assessing a particular hypothesis.<sup>55</sup> If there were no uniform intuitive judgments as to *any* statements made in the language, then a theory could not proceed. However, it is apparent that there is an enormous mass of unquestionable data concerning the speaker's intuition.<sup>56</sup> Performance provides us with a large number of "clear" cases on which to develop and check a theory of competence. In fact, one of the valid insights in Hart's view of language is that there *are* clear cases, and that in some sense this must be significant. Unfortunately, Hart did not appreciate that these cases must be clear precisely because they conform to the structural rules of language.

<sup>53</sup> See CHOMSKY, *op. cit. supra* note 36, at 3-4.

<sup>54</sup> *Id.* at 8.

<sup>55</sup> Thus, it may be objected that Chomsky's approach is "unscientific." In reply, Chomsky maintains that the social and behavioral sciences have made objectivity an end in itself rather than a means to reaching insight or understanding. He suggests that the natural sciences have properly regarded objectivity as a tool for gaining insight into deeper explanatory hypotheses. CHOMSKY, *op. cit. supra* note 36, at 20.

<sup>56</sup> *Ibid.*

### III. HUMAN ACTION AND LINGUISTIC PERFORMANCE

The goal of making explicit the speaker's competence means that linguistic theory is mentalistic, *i.e.*, it seeks to discover a mental reality underlying performance. This is obviously in marked contrast to Hart's view which shunned such supposedly unhelpful notions as mental states. The significance of this split is by no means limited to language. Rather, it involves the general philosophical question of mentalism and its role in accounting for human behavior. Hart's analysis of human action purported to show that the concept of human action could be explained without reference to any mental factors. Chomsky's position would certainly be that this is a totally inadequate approach.

In his approach to language, Chomsky regards himself as in accord with the rationalist views held by the Cartesian linguists of the seventeenth century. In a volume<sup>57</sup> devoted to showing the modern relevance of many of the Cartesian views, Chomsky analyzes the arguments for the Cartesian postulation of mind. The analysis bears directly on Hart's position.

As noted, Chomsky takes the central fact of language to be its creative aspect. Descartes had relied on the same fact to support his claim that human behavior could not be explained on purely mechanistic grounds as could all other animal behavior. The creative aspect of language is that it is both unbounded in scope and stimulus-free. Descartes faced:<sup>58</sup>

the problem posed . . . by the fact that human language, being free from control by identifiable external stimuli or internal physiological states, can serve as a general instrument of thought and self-expression rather than merely as a communicative device of report, request, or command.

It was because of the presumed impossibility of a mechanistic explanation of language that Descartes attributed "mind" as well as body to other human beings. The postulated substance plays the role of a "creative principle" alongside the mechanical principle.

Chomsky notes some early objections to the Cartesian position which are based on the claim that man is simply a more complex mechanism than are other animals. The claim, however, is not supported by any theory of how such a mechanistic explanation might operate. Chomsky then considers a recent philosophical attempt by Gilbert Ryle to dispose of "Descartes's Myth," the "ghost in the

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<sup>57</sup> CHOMSKY, *CARTESIAN LINGUISTICS* (1966).

<sup>58</sup> *Id.* at 11-12.

machine.”<sup>59</sup> Ryle maintained that the Cartesian should have been “asking by what criteria intelligent behavior is distinguished from nonintelligent behavior.”<sup>60</sup> Ryle’s formulation of the issue should be compared with Hart’s formulation noted earlier. Hart asked “What distinguishes the physical movement of a human body from a human action?” Both Ryle and Hart are in error in supposing either that the question should be formulated in this manner or that this is the way the Cartesian saw the problem. This is not to say that the Ryle/Hart question is an invalid one. However, even if we answer this question by clearly identifying what counts as human action, we have not met the Cartesian argument. The Cartesian was concerned not merely with identifying, but with accounting for, human action. The postulation of a creative principle was in response to the failure of any mechanistic explanation of human action, especially as exhibited in language.<sup>61</sup>

It is interesting to take Hart’s formulation of the human action issue and ask a similar question about his method of conceptual analysis. A critic, noting Hart’s reliance on ordinary uses, might ask “What distinguishes an ordinary use from a non-ordinary use?” Assuming Hart could develop criteria which would answer this question, it seems obvious that genuine questions could still be raised, *e.g.*, what explains why these uses are ordinary? Thus, Hart has, in effect, misrepresented the problem of human action, by asking only one of several crucial questions. According to Chomsky, Hart is not alone in this error:<sup>62</sup>

It can hardly be claimed that we have advanced significantly beyond the seventeenth century in determining the characteristics of intelligent behavior, the means by which it is acquired, the principles that govern it, or the nature of the structures that underlie it. One may choose to ignore these problems, but no coherent argument has been offered that suggests that they are either unreal or beyond investigation.

It was noted earlier that Hart’s view of language contained an assumption that language was a device developed by man in order to

<sup>59</sup> RYLE, *THE CONCEPT OF MIND* (1949). Ryle’s analysis is considered a model of ordinary language philosophy. See, *e.g.*, HARTNACK, *op. cit. supra* note 13, at 110-20.

<sup>60</sup> RYLE, *op. cit. supra* note 59, at 21.

<sup>61</sup> CHOMSKY, *op. cit. supra* note 57, at 12. Chomsky claims that Ryle has done no better than Descartes at describing intelligent behavior. “These are described in terms of ‘powers,’ ‘propensities,’ and ‘dispositions,’ which are characterized only through scattered examples. These constitute a new ‘myth’ as mysterious and poorly understood as Descartes’ ‘mental substance.’” *Id.* at 81 n.20. For an analogous criticism of Ryle’s concept of perception, see Fodor, *Could There Be a Theory of Perception?*, 63 J. PHIL. 369 (1966).

<sup>62</sup> CHOMSKY, *op. cit. supra* note 57, at 12.

accomplish certain purposes. This was related to the view that language is unsystematic. The discussion has so far been focused primarily on the latter point and an attempt has been made to show how Chomsky's theory of competence develops the premise that language is systematic. It is equally interesting, however, to contrast Chomsky's and Hart's views as to the development of language in its present form. The issue may be framed as one of differing accounts of how the ability of the mature speaker is acquired.<sup>63</sup> Language may be seen as a tool which owes its existence to its practical usefulness.<sup>64</sup> A child learning the language is taught by adults the conventions which have been established in the given linguistic community. The child's role in the learning process is limited to relatively simple operations of perceiving, memorizing and, in some weak sense, generalizing from his various perceptions. The contribution of the child in the learning process is minimal in relation to the contribution made by his experience (including, of course, his linguistic experience). This is basically an empiricist account of the development of human knowledge.<sup>65</sup>

Chomsky rejects the empiricist claim because it fails to explain how the highly structured rules of language are developed. Again, he compares his view with the rationalist position of the Cartesian.<sup>66</sup> The rationalist claimed that, in addition to the processes attributed by the empiricist to the mind, there are "innate ideas" that determine in a fairly restricted way the form in which conceptual knowledge develops. These innate ideas place constraints on the manner in which experience is represented. Thus, the rationalist claims that the contribution of the child in the learning process is far greater than the empiricist supposes. On exposure to experience, the innate mechanisms are in a sense "triggered," and the latent structure of thought is realized.

The view that there are innate ideas entails a rejection of the claim that language is a human invention or that it is essentially a tool which serves specific human purposes. Rather, "man has a species-

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<sup>63</sup> For a discussion of linguistic theory framed in this way, see Chomsky, *supra* note 34, at 61-112.

<sup>64</sup> See note 30 *supra*. See also Austin, *A Plea for Excuses*, 57 PROC. ARIS. Soc'y 1 (1956), in ORDINARY LANGUAGE 41 (Chappell ed. 1964).

<sup>65</sup> See CHOMSKY, *op. cit. supra* note 36, at 47-48. See generally KATZ, *op. cit. supra* note 52, at 240-82. For a thorough discussion of behaviorist accounts of language learnings, see Chomsky, *A Review of B. F. Skinner's Verbal Behavior*, 35 LANGUAGE 26 (1959), in Fodor & Katz, *op. cit. supra* note 32, at 547.

<sup>66</sup> CHOMSKY, *op. cit. supra* note 36, at 48-53.

specific capacity, a unique type of intellectual organization which cannot be attributed to peripheral organs or related to general intelligence."<sup>67</sup> The structure of language is dictated by factors which are not controlled by man.<sup>68</sup> Furthermore, there is no logical necessity that language use be "practical" in the sense that it be tied to specific purposes. No doubt language is enormously useful, and its appearance in the evolutionary process may have been a key factor in man's predominance over other animals.<sup>69</sup> However, the use of language is a derivative feature of the general capacity to acquire a conceptual structure.<sup>70</sup>

Chomsky's views suggest that experimental psychology should be concerned with the problem of revealing man's intrinsic cognitive capacities. Indeed, if these capacities do play a central role in human thought, it is difficult to see how a study of human behavior can proceed until the device is understood.<sup>71</sup> Some recent work in cognitive psychology has, in fact, been based on this approach. Bruner has observed that a child is able to communicate in various ways before he is able to understand or use language.<sup>72</sup> These forms of communication, however, differ in a fundamental way from language. They are agrammatical whereas language, once it passes the first stage of one-word utterances, is always characterized by grammatical structure. Interestingly, studies show that when the child first produces sentences, they are not full sentences which have been memorized but are forms which permit the generation of new sentences. For example, the child is likely to use a form such as "that truck," and later "that baby." Once the child begins this process, it develops at a rapid rate.

For Bruner, the key feature of the child's early acquisition of a grammar is that the grammatical rules are linked to his symbolic representation of reality. Thus:<sup>73</sup>

having translated or encoded a set of events into a rule-bound symbolic system, a human being is then able to transform that representation into an altered version that may but does not necessarily correspond to some

<sup>67</sup> CHOMSKY, *op. cit. supra* note 57, at 4.

<sup>68</sup> Lenneberg argues convincingly that language is not a cultural phenomenon. Rather, man has a biological propensity to use language. Lenneberg, *The Capacity for Language Acquisition*, in Fodor & Katz, *op. cit. supra* note 32, at 579.

<sup>69</sup> *Id.* at 600.

<sup>70</sup> See note 39 *supra*.

<sup>71</sup> CHOMSKY, *op. cit. supra* note 36, at 10.

<sup>72</sup> BRUNER, OLVER & GREENFIELD, *STUDIES IN COGNITIVE GROWTH* 34 (1966). No evaluation of Bruner's work is intended; it is cited because it suggests, as Chomsky's work suggests, fundamentally new ways of looking at human behavior. See also, MILLER, GALLANTER & PRIBRAM, *PLANS AND THE STRUCTURE OF BEHAVIOR* (1960).

<sup>73</sup> BRUNER, *op. cit. supra* note 72, at 37.

possible set of events. It is this form . . . [that] permits for experimental alteration of the environment without having, so to speak, to raise a finger by way of trial and error or to picture anything in the mind's eye by imagery.

In considering the relation between the grammar and the child's cognitive growth, the distinction drawn earlier between the syntactic and semantic components is relevant. It appears that the syntactic ability develops very rapidly whereas other linguistic abilities require a much longer period. A child of five is able to produce a wide range of sentences which are syntactically well-formed even though he is unable to appreciate fully the empirical implications of what he has said. Apparently, as the child matures, he brings his world of experience under the control of principles of organization that to a degree are isomorphic with syntactical structure.<sup>74</sup>

A final point along these lines is the suggestion that the structural rules which underlie language may extend to nonlinguistic activities. Bruner quotes Miller and Chomsky as follows:<sup>75</sup>

An organism that is intricate and highly structured enough to perform the operations that we have seen to be involved in linguistic communication does not suddenly lose its intricacy and structure when it turns to nonlinguistic activities. In particular, such an organism can form verbal plans to guide many of its non-verbal acts. The verbal machinery turns out sentences—and for civilized men, sentences have a compelling power to control both thought and action.

If this conclusion is correct, then it would seem that Hart's view of language has, in effect, completely inverted the facts. Language is neither invented by man nor is it merely a passive tool. Rather, the structure of language may structure our experience, understanding and activities.

#### IV. POSSIBLE USES OF A THEORY OF LANGUAGE IN JURISPRUDENCE

The contrast between Chomsky's and Hart's conceptions of how language relates to the philosophical problem of human action and the brief reference to Bruner's work in cognitive psychology illustrate the far-reaching implications of Chomsky's work. The jurist, however, may question the relevance of any of this for the study of jurispru-

<sup>74</sup> There is evidence that demonstrates the impact of linguistic structure even on perception. It has been noted that people will "imitate" a statement made in a language foreign to them but "repeat" (impose their own patterns) a statement of their own language. Harris, *Distributional Structure*, 10 *WORD* 146 (1954), in Fodor & Katz *op. cit. supra* note 32, at 33, 36.

<sup>75</sup> BRUNER, *op. cit. supra* note 72, at 47.

dence. Several answers might be made. First, it seems clear that the analytical methods of a leading jurist—conceded to be strongly influenced by linguistic philosophy—are based on an incorrect conception of language. Second, it would be surprising if insights which are important in linguistics, philosophy and psychology had no relevance in jurisprudence. These are not wholly satisfactory answers. A complete answer would be one which successfully applied linguistic theory to particular jurisprudential problems. It must be frankly admitted that at present, this is not possible. Current theories are highly tentative and fundamental questions remain open. Thus, what follows suggests areas in which a fully developed theory of language would be valuable. Definitive answers must await further research.

A primary task of a theory of language is formulating an adequate theory of syntax. Such a theory makes explicit the speaker's implicit ability to analyze the formal structure and relationships of sentences which he produces or understands. It has been argued that some philosophical problems turn in part on the syntactic relations between sentences. Specifically, Katz and Fodor suggest that a syntactical characterization clarifies the similarities and differences between declarative and imperative statements.<sup>76</sup> This should be particularly interesting to those concerned with jurisprudential debate over "prescription" and "description." If imperatives are neither true nor false, they nevertheless are syntactically related to declaratives whose truth or falsity (or meaninglessness) can be determined. A second problem which is in part syntactical is the problem of ambiguity and its resolution in discourse. Some sentences support differing inferences because of their syntactic form.<sup>77</sup> An obvious goal of a theory of syntax is to exhibit the formal ambiguities in such sentences. However, if a theory is limited to individual sentences, it neglects the fact that a syntactically ambiguous sentence is often disambiguated by other sentences which surround it in a segment of discourse.<sup>78</sup> Explicating the structural relation between sentences may make it possible to determine when words or phrases are synonymous in a given context. Similarly, contextual disambiguation may be used to justify the claim that a given sentence be read in a certain way. Finally, it has been suggested that discourse analysis may afford a more complete theory of cognitive

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<sup>76</sup> Katz & Fodor, *supra* note 42, at 229.

<sup>77</sup> *Id.* at 229-30.

<sup>78</sup> This problem is dealt with in Harris, *Discourse Analysis*, 28 *LANGUAGE* 1 (1952), in Fodor & Katz, *op. cit. supra* note 32, at 355.



significance by showing when a set of sentences which are individually meaningful form a meaningless discourse.<sup>79</sup>

Discourse analysis would seem peculiarly appropriate in the law. A judicial opinion is a clearly demarcated segment of discourse, usually written so as to avoid both ambiguities and the personal idiosyncracies of its author. The complexities of drawing valid inferences from this source lie at the heart of the system of judicial precedents. A single sentence may be subject to various acceptable readings yet, when read in context, some or even all readings may be felt to lack significance. There may be no single sentence which appears central to an opinion, yet it may be clear what the case holds. The ability to interpret segments of discourse rests at least in part on the implicit syntactical ability of the speaker and, therefore, justifies the claim that a theory of syntax is significant in jurisprudence.

As noted earlier, the process of interpreting the meaning of an utterance involves more than assigning an abstract syntactic structure to the utterance; the interpretive semantic component must also be used. An adequate semantic theory would appear to be a major step toward a full understanding of conceptual knowledge and would provide a means of rationally analyzing the meaning of judicial discourse. Semantic theory is, however, the least developed area of linguistics. This is not surprising in view of the logical priority of a theory of syntax. Nonetheless, Katz and Fodor have provided a promising theoretical framework for a semantic theory.<sup>80</sup>

A semantic theory must contain rules which provide a meaning for each of the infinite set of sentences generated by the syntactic component. Katz and Fodor conceive of the speaker's semantic competence as a compositional process in which the meaning of sentences is a function of the meaning of the sentence elements. The rules assign meaning to the elements of the sentence, then assign meaning to the higher level combinations of elements and so forth until sentence meaning is derived. Overlooking refinements, the elements may be taken to be words and the model one of fixing the word meanings and the meanings which they combine to give in a sentence. Thus, two things are needed: a dictionary that provides a representation of the meaning of every word in the language, and a system of projection rules for representing the meaning of combinations of words.<sup>81</sup>

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<sup>79</sup> Fodor & Katz, *op. cit. supra* note 42, at 353.

<sup>80</sup> Katz & Fodor, *The Structure of a Semantic Theory*, 39 *LANGUAGE* 170 (1963), in Fodor & Katz, *op. cit. supra* note 32, at 479.

<sup>81</sup> *Id.* at 493.

Given an adequate semantic theory, it is possible to constructively approach the problem of deciding what the role of language is in our broader system of conceptual understanding and belief. Just as syntax is somehow related to semantics, so is there a relation, at present unexplored, between semantics and systems of belief.<sup>82</sup> Aware of the complexities of the problems, some suggestions have been made as to how a full theory of language would assist in the broader problem of conceptual analysis.<sup>83</sup> It may be the case that problems of conceptual understanding and belief are not merely problems of language but, without a theory of language, there is no way to determine what the role of language is. Thus, Katz suggests that an initial problem is to be able to formulate precisely the meaning of a philosophically significant word.<sup>84</sup> His method should be of interest to the lawyer. Katz notes that the meaning of a significant word poses a problem because it is not intuitively clear. The conceptual distinctions embodied in such words cannot be brought out by a direct appeal to our linguistic intuition. However, if we accept the compositional model of our conceptual process, then a means of formally revealing the crucial distinctions could be devised. Katz states that the proper method is:<sup>85</sup>

to start with the clear cases and construct a theory to cover them which also provides a treatment of the unclear cases. The theory must extrapolate from the clear cases in such a fashion as to extend its generalizations to the unclear cases, thereby utilizing our strong intuitions about clear cases to compensate for our weak intuitions about unclear ones.

Again, the notion of intuition which is involved must be kept clear. What is assumed is that there is a structure underlying language and that intuitively clear cases are evidence of it. The existence of unclear cases does not show that no structure exists. The speaker's tacit knowledge, his competence, may not be immediately available to him and sophisticated techniques may be needed to discover the underlying rules.<sup>86</sup> Furthermore, if some terms are exceedingly complex, there may be specific limitations, unrelated to competence, on the ability of the speaker to clearly represent these terms. There is, however, no a priori reason why unclear cases of meaning cannot be formally clarified within an adequate theory of language.

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<sup>82</sup> CHOMSKY, *op. cit. supra* note 36, at 159.

<sup>83</sup> See generally KATZ, *op. cit. supra* note 52, at 186-317.

<sup>84</sup> *Id.* at 283.

<sup>85</sup> *Id.* at 286.

<sup>86</sup> See CHOMSKY, *op. cit. supra* note 36, at 10-12.

## V. CONCLUSION

The foregoing discussion has drawn a general contrast between Hart's and Chomsky's conceptions of the nature of language. To a degree, an attempt has also been made to contrast their approaches to specific problems. This, however, has been complicated by the fact that Hart and Chomsky frame questions concerning meaning, definition, and human action in fundamentally different ways. For example, Hart regards mental states irrelevant to the problem of human action; Chomsky considers an explanation of mental processes a prerequisite to understanding human behavior. It is striking to see how these differences may be traced to their basic premises about language. If, as Hart seems to hold, language is a matter of convention, then it is unnecessary to ask what goes on in the minds of those who use the language. Indeed, everyone might have different mental states yet use the language perfectly well. Understanding language thus consists of accurately describing the conventions, the rules of use, not the mental states of individual speakers. Similarly, the concept of human action is understood by accurately describing the social rules for ascribing responsibility.

By contrast, Chomsky starts from the premise that language is inherently structured and not a system of conventions. Consequently, understanding language consists of explaining the underlying mental reality which dictates the structure. The problem of human action necessarily involves questions about mental processes. Following this line of reasoning, it would be natural to view the problem of responsibility as one aspect of the general problem of understanding and accounting for human behavior. Thus, it is essential to focus on the mental aspect of an individual's actions. It is quite true that mental structure and processes are poorly understood. This does not, however, mean that these problems should be neglected; quite the contrary would seem called for.

It is too early to fix the full significance for jurisprudence of Chomsky's work. His basic conception of language seems much superior to Hart's view. When more fully developed, Chomsky's theory of language may be directly useful in jurisprudence. However, the more general philosophical implications are of greater immediate interest. It is submitted that at this level also, Chomsky's work raises deeper issues and suggests more satisfactory answers than does Hart's method of analysis. For the jurist interested in the nature of language and its role in human behavior, Chomsky's work is of central importance.